

IN THE DRAWINGS

The attached sheet of drawings includes changes to Fig. 3 and Fig. 4. These sheets, which include Fig. 3 and Fig. 4, replace the original sheets including Fig. 3 and Fig. 4.

Attachment: Replacement Sheets

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the above amendments and following remarks is respectfully requested.

Claims 14-26 are pending in this application. Claims 14-19 and 24-26 are withdrawn from consideration. By this Amendment, Figures 3 and 4 are amended; Claims 20 and 21 are amended; and no claims are canceled or added herewith. It is respectfully submitted that no new matter is added by this Amendment.

In the outstanding Office Action, the drawings were objected to; Claim 20 was rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,769,201 to Pavelescu in view of U.S. Patent No. 5,983,524 to Polegato; and Claims 21-23 were indicated as including allowable subject matter.

With respect to the objection to the drawings, Figures 3 and 4 are amended by the present Amendment in order to correct the informality. Accordingly, withdrawal of the objection to the drawings is respectfully requested.

With respect to the rejection under 35 U.S.C. § 103(a) based on Pavelescu and Polegato, that rejection is respectfully traversed. In particular, Claim 20 is amended to include the feature of the upper having a lower edge that is folded and glued so as to adhere under said inshoe. This feature was previously recited in Claim 21 and is not shown in the applied art.

Instead, Pavelescu discusses as best shown in Fig. 2, that the lower end of the exterior upper 1 is folded over towards the inside of the shoe by a portion (b). The lower portion of functional layer 2 extends past lining 3 by the portion (b) and is turned towards the outside of the shoe, folded over the lower end of the exterior upper 1, and joined by a layer 7 to the exterior upper 1 on the inside and the outside. The fold edge 6 of the functional layer 2 is flush with the lower edge of the exterior upper 1 in area (b). A seam 5 joins the lower end of

the exterior upper 1, the functional layer 2, and an insole 11. Pavelescu further discusses that in order to seal the underside of the shoe structure, an inner sole 9 is glued from below to portion (b) of the end of the exterior upper 1, which is turned towards the inside and covered by the lower portion of the functional layer 2, and to the insole 11.

Polegato does not discuss in any of the embodiments that the upper is glued to the filler layer, let alone that the upper is glued from below. Rather, the upper is in contact to the filler layer from above as in Figs. 4, 7 and 8. In Fig. 3, the upper is in contact to the side of the filler layer. In the remaining embodiments the upper is in contact with the insole. Additionally, Polegato does not disclose that the filler layer is impermeable, as set forth in Claim 20. Rather, the filler layer is composed of felt.

Accordingly, the features recited in Claim 20 discussed above are not taught or suggested by the applied art. Again, Claim 20 recites in part that the upper has a lower edge that is folded and glued so as to adhere under said inshoe. In accordance with the claimed features, the positioning and adherence of the lower edge of the upper to the underside of the inshoe prevents water infiltration into the shoe across the upper.

Again, in Pavelescu, the inner sole 9 is “*glued from below to portion (b) of exterior upper (1)*” in order to seal the underside of the shoe. That is, waterproof sealing is achieved by the folding of the functional layer (2) over the end portion of the upper (1) at area (b) to which the inner sole (9) is glued. Pavelescu does not disclose that the exterior upper (1) is glued so as to adhere to under the inner sole (9). Thus, Pavelescu does not hint nor suggest that the exterior upper (1) should be folded below the inshoe (9) and glued thereto in order to achieve the waterproof sealing.

Polegato teaches preventing water infiltrations from the tread. There is no teaching to prevent water infiltration across the upper or through the upper. In all the embodiments, the upper is in contact with the filler layer or the insole. Neither of these components are

impermeable to water. Hence, the upper becoming loaded with water may lead to water being transferred into the interior of the shoe through either the filler layer or the insole. Polegato does not address the problem of water infiltration through the shoe upper let alone teach a solution to the problem. Thus, Polegato does not hint nor suggest that the upper should be folded below the filler layer, which is waterproof, and glued thereto in order to achieve the waterproof sealing.

Accordingly, for at least the reasons discussed above, even a combination of Pavelescu and Polegato would not arrive at the claimed invention. Withdrawal of the rejection under 35 U.S.C. § 103(a) based on Pavelescu and Polegato is respectfully requested.

Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.

Steven P. Weihrouch
Attorney of Record
Registration No. 32,829

Kevin M. McKinley
Registration No. 43,794

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/09)